

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
)	
Teledesic LLC)	File Nos. 22-DSS-P/LA-94;
Application for Authority to Construct,)	43-SAT-AMEND-95; 127-SAT-AMEND-
Launch, and Operate a Ka-Band Satellite)	95; 195-SAT-ML-97
System in the Fixed Satellite Service)	
)	
Objection of @contact LLC)	

MEMORANDUM OPINION AND ORDER

Adopted: June 17, 2002

Released: June 18, 2002

By the Chief, Satellite Division:

I. INTRODUCTION

1. By this Order, we find that Teledesic LLC (Teledesic) has satisfied the beginning construction milestone set forth in its authorization to operate satellites in the non-geostationary satellite orbit (NGSO) in the Ka-band. Consequently, we deny @contact LLC's (@contact) objection to Teledesic's showing that it has satisfied this first implementation milestone. This action is consistent with the Commission's policies to encourage technical innovation in satellite design and ensure that licensees are committed to proceed with their business plans.

II. BACKGROUND

2. In 1997, as part of the first Ka-band processing round, the International Bureau (Bureau) authorized Teledesic to construct, launch and operate a NGSO system to provide domestic and international fixed-satellite service (FSS) in portions of the Ka-Band.¹ In the order, Teledesic was authorized to operate a NGSO constellation consisting of 840 satellites to provide a wide range of information services from high quality voice channels to broadband channels supporting video conferencing, interactive multimedia and real time two-way digital data. Teledesic also proposed to operate inter-satellite links (ISLs). The Bureau, however, deferred granting ISL spectrum to Teledesic because the proposed bands were not available for ISL service at that time. In addition, the Bureau stated it would not impose system implementation milestones until Teledesic was assigned spectrum for its proposed ISLs.²

3. Subsequently, Teledesic filed a modification application to make numerous technological changes to its system, including decreasing the number and inclination of orbital planes and decreasing the

¹ Teledesic Corporation, Application For Authority to Construct, Launch and Operate a Low Earth Orbit Satellite System in the Domestic and International Fixed-Satellite Service, *Order and Authorization*, 12 FCC Rcd 3154 (1997).

² *Id.* at 3164.

number of proposed satellites from 840 to 288. Teledesic stated that the modification represented technological advances since the system was initially designed. The Bureau granted the modification application in January 1999.³

4. Thereafter, in January 2001, the Bureau again modified Teledesic's NGSO FSS authorization, this time to allow Teledesic to operate ISLs. At this time, the Bureau also assigned milestone requirements for the construction, launch and operation of the satellite system.⁴ Consistent with Section 25.145(f) of the Commission's rules, Teledesic was required to begin construction of its first two satellites within one year of the grant of its authorization.⁵

5. To determine whether Teledesic complied with the construction commencement milestone of its license, in January 2002, the Bureau directed Teledesic to submit a copy of an executed contract verifying that construction has commenced and that Teledesic's satellites will be built within the time frame specified in its license.⁶ On January 31, 2002, Teledesic filed an application to further modify its Ka-band NGSO system. In the pending application Teledesic proposes to operate a system of 30 operational satellites in medium-Earth orbit.⁷ Consequently, in responding to the Bureau's request for its manufacturing contract, Teledesic filed a copy of the contract entered into with Alenia Spazio SpA for its proposed 30 satellite system, and not its presently authorized 288 satellite system.⁸

6. @contact objects to Teledesic's assertion that it has met its construction commencement milestone. @contact argues that Teledesic is not constructing its satellites in accordance with the technical parameters of its authorization. As a result, @contact states that Teledesic's Ka-band license is null and void.⁹ Teledesic responds that Commission precedent allows licensees to file contracts based on "unapproved" technical parameters and that the timely and complete construction contract it submitted evidences Teledesic's confidence in the proposed system from a regulatory and commercial perspective.¹⁰ Teledesic also asserts that the purpose behind the milestone requirement does not prohibit licensees from deviating from the technical specifications in their licenses.¹¹

III. DISCUSSION

7. It is longstanding Commission policy to impose implementation milestones upon licensees in the fixed-satellite service.¹² The milestone schedule included in each authorization is designed to ensure

³ Teledesic LLC, For Minor Modification of License to Construct, Launch and Operate a Non-Geostationary Fixed-Satellite Service System, *Order and Authorization*, 14 FCC Rcd 2261 (Int'l Bur. 1999).

⁴ Teledesic LLC, Application for Authority to Launch and Operate a Ka-band Satellite System in the Fixed Satellite Service, *Order and Authorization*, 16 FCC Rcd 2501 (Int'l Bur. 2001).

⁵ *Id.* at 2505; 47 C.F.R. § 25.145(f).

⁶ Letter to Mark A. Grannis, Counsel for Teledesic LLC, from Thomas S. Tycz, Chief, Satellite and Radiocommunication Division (January 28, 2002).

⁷ Application of Teledesic LLC for Minor Modification of License to Construct, Launch and Operate a Non-Geostationary Fixed-Satellite System, File No. SAT-MOD-20020201-00011.

⁸ Letter to William F. Caton, Secretary, Federal Communications Commission from Mark A. Grannis, Counsel for Teledesic LLC (February 8, 2002).

⁹ Objection of @contact, LLC, filed March 5, 2002 (*@contact Objection*).

¹⁰ Response of Teledesic LLC to Objection of @contact LLC, Filed March 15, 2002, at 3.

¹¹ *Id.* at 6.

¹² Norris Satellite Communication, Inc., *Memorandum Opinion and Order*, 12 FCC Rcd 22299 (1997) ("*Norris*").

that licensed entities are proceeding with construction and will launch their satellites into the limited orbit spectrum resource in a timely manner, and that the spectrum is not held by licensees unable or unwilling to proceed with their plans.¹³ Pursuant to Section 25.145(f) of the Commission's rules, the first implementation milestone requires NGSO FSS licensees to begin construction of its first two satellites within one year of the unconditional grant of its authorization.¹⁴ This rule was incorporated into Teledesic's authorization, thus Teledesic was required to commence construction of first two satellites in January 2002. To satisfy the construction commencement milestone, the Commission requires licensees to execute non-contingent satellite construction contracts.¹⁵

8. @contact does not dispute that Teledesic has a non-contingent contract with a satellite manufacturer. Rather, it contends that because that contract requires the manufacturer to build a system that the Commission has not authorized, Teledesic's license is null and void by its terms.¹⁶ This overlooks the fact that the Commission often receives requests from licensees to modify the technical design of their satellites while they are being constructed. In recognition of the several years required to construct a satellite, or constellation of satellites, the rapidly changing technology, and our goal of encouraging more efficient use of the radio spectrum, the Commission generally allows licensees to modify their satellite systems provided the modifications are consistent with Commission policies and do not present any particular interference problems.¹⁷ Teledesic's modification application will be decided on its own merit and does not factor into our determination as to whether Teledesic has met its initial construction milestone.

9. Under @contact's interpretation of the milestone requirement, Teledesic would arguably be precluded from ever modifying its NGSO system. This is contrary to the Commission's rules and policies. The policy objective of the milestone rule is to ensure that unused spectrum is reassigned as quickly as possible to another qualified entity when there are substantial doubts as to whether the licensee intends to or is able to proceed with its business plan. We find that the contract submitted by Teledesic demonstrates its intent to use the spectrum consistent with the stated policy objectives of the milestone requirement.

10. Indeed, @contact does not point to anything in the contract that indicates that Teledesic is not committed to building its satellite system. The non-contingent construction contract requirement contemplates that there will be neither significant delays between the execution of the contract and the actual commencement of construction, or conditions precedent to construction.¹⁸ In support of its objection, @contact refers to the Commission's revocation order in Mobile Communications Holdings, Inc. (MCHI) "Big Leo" license for failure to enter into a binding contract for construction of the satellites in question.¹⁹ In the *MCHI Order*, however, the issue was not whether MCHI had contracted to build its authorized system but whether the contract was sufficient to satisfy its construction commencement milestones.²⁰

¹³ Rulemaking to Amend Parts 1, 2, 21 and 25 of the Commission's Rules to Redesignate the 27.5 and 29.5 GHz Frequency Band to Establish Rules and Policies for Local Multipoint Distribution Service for Fixed Satellite Services, *Third Report and Order*, 12 FCC Rcd 22310 (1997).

¹⁴ 47 C.F.R. § 25.145(f).

¹⁵ *Norris*, 12 FCC Rcd at 22303.

¹⁶ @contact *Objection* at 5.

¹⁷ See, e.g., GTE Spacenet Corp., 5 FCC Rcd 4112 (CCB, 1990); American Satellite Co., 5 FCC Rcd 1186 (CCB 1990).

¹⁸ *Id.* at 22304.

¹⁹ @contact *Objection* at 7, citing Mobile Communications Holdings, Inc., *Memorandum Opinion and Order*, 16 FCC Rcd 11766 (Int'l Bur. 2001) ("*MCHI Order*").

²⁰ *MCHI Order*, 16 FCC Rcd at 11769.

11. Based on our review of Teledesic's contract, we find it is non-contingent and does not allow for significant delays in implementation. As a threshold matter, the contract was executed and the effective date of the contract and the date of delivery for the first two satellites in keeping with the Commission's milestones. The contract shows that construction on the first two satellites has commenced and that they will be built within the time frame specified in Teledesic's license. Further, the primary obligation of the purchaser --the payment terms -- evidenced a sufficient commitment on Teledesic's part to the contract. The due dates for payments do not indicate any unacceptable delay in the commitments. Moreover, the contract provided that payments are due within a reasonable number of days after invoice, and this obligation was underscored by the termination clause, which allows the manufacturer to deem the licensee in default if payment is not made on time. Generally, we look to the statement of work as an element in confirming that the contract is fully realized and does not leave significant aspects open to further or contingent negotiations on details. In this case, although Teledesic did not submit a statement of work, the payment schedule and payment commitments were detailed enough to allow us to conclude that the parties have a sufficiently realized agreement. We did not find any significant contingencies or any undue ability on the part of Teledesic to delay the contract. Consequently, we find that Teledesic's contract is sufficient to satisfy Teledesic's construction commencement milestone.

IV. CONCLUSION AND ORDERING CLAUSES

12. Based on the foregoing, we deny @contact's objection and request to declare Teledesic LLC's Ka-band license null and void. Accordingly IT IS ORDERED that the Objection of @contact LLC filed March 5, 2002 is denied. IT IS FURTHER ORDERED, that Teledesic LLC has satisfied its first implementation milestone set forth in its Ka-Band authorization, File No. 22 DSS-P/LA-94; 43-SAT-AMEND-95; 127-SAT-AMEND-95; 195-SAT-ML-97.

13. This Order is issued pursuant to Section 0.261 of the Commission's rules on delegated authority, 47 C.F.R. § 0.261, and is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Thomas S. Tycz
Chief
Satellite Division